UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,695	03/25/2004	Per Kare Tvinnereim	RR-391 PCT/US CIP#2 (E344	6058

20427 7590 01/24/2007

RODMAN RODMAN
7 SOUTH BROADWAY
WHITE PLAINS, NY 10601

EXAMINER	
BOLLINGER, DAVID H	
ART UNIT	**PAPER NUMBER**
3653	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/24/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/808,695	TVINNEREIM ET AL.	
	Examiner	Art Unit	
	David H. Bollinger	3653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 November 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-23* is/are pending in the application.

4a) Of the above claim(s) *8-11 and 20-23* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7 and 12-18* is/are rejected.

7)☒ Claim(s) *19* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *25 March 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

1. Applicant's election with traverse of Group I in the reply filed on 6 November 2006 is acknowledged. The traversal is on the ground(s) that groups I and II appear to be so interrelated that a search and examination of the claims of group I would probably overlap or encompass the search field of the claims of group II thus presenting no serious burden for the examiner. This is not found persuasive because the steps of the method found in claims 8-11 and newly presented claims 20-23 are so tied to the structure of the apparatus of group I, claims 1-7 and newly presented claims 12-19, therefore; the search for groups I and II may not necessarily overlap or be coextensive thereby placing a significant additional burden on the examiner.

The requirement is still deemed proper and is therefore made FINAL.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1 through 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1 line 12, the recitation of the exemplary language "such as" makes it unclear whether the elements following such language constitute a positive recitation of the elements.

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140

F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 2, 12 and 13 are rejected on the ground of nonstatutory obviousness double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,012,588. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1, 2, 12 and 13 are generic to all that is recited in claim 1 of U.S. Patent No. 6,012,588. In other words, claim 1 of U.S. Patent No. 6,012,588 **fully encompasses** the subject matter of claims 1, 2, 12 and 13 and therefore anticipates claims 1, 2, 12 and 13. Specifically, the guiding and stabilizing of the bottle in claims 1, 2, 12 and 13 is anticipated by the specific guide and stabilizer of claim 1 of U.S. Patent No. 6,012,588.

Claims 4 through 7 are rejected on the ground of nonstatutory obviousness double patenting as being unpatentable over claims 2 through 5 respectively of U.S. Patent No. 6,012,588 and claims 15 through 18 are rejected on the ground of nonstatutory obviousness double patenting as being unpatentable over claims 2 through 5 respectively of U.S. Patent No. 6,012,588. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 2 through 5 and claims 15 through 18 are generic to all that is recited in claims 2 through 5 respectively of U.S. Patent No. 6,012,588. In other words, claims 2 through 5 of U.S. Patent No. 6,012,588 **fully encompass** the subject matter of claims 4 through 7 and 15 through 18 and therefore anticipates claims 4 through 7 and 15 through 18. Specifically, the guiding and stabilizing of the bottles is anticipated by the specific guide and stabilizer required in claims 2 through 5 of U.S. Patent No. 6,012,588.

5. Claim 3 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

6. Claim 19 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David H. Bollinger whose telephone number is 571-272-6935. The examiner can normally be reached on Tuesday through Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Mackey, can be reached on 571-272-6935. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

David H. Bollinger
Primary Examiner
Art Unit 3653
1/22/07